

STATE OF VERMONT
PUBLIC SERVICE BOARD

CPG No. 904-CM

Petition of TracFone Wireless, LLC, for a certificate)
of public good to operate as a provider of commercial)
mobile radio services in Vermont)

Order entered: 10/26/2011

I. INTRODUCTION

TracFone Wireless, LLC ("TracFone" or "Company"), d/b/a NET10, requests issuance of a certificate of public good ("CPG"), pursuant to 30 V.S.A. § 231 and the Vermont Public Service Board's ("Board") Order in Docket No. 5808, to provide commercial mobile radio service ("CMRS") in Vermont. In this Order, the Board concludes that TracFone should be issued a CPG as requested to allow the Company to operate as a commercial mobile radio carrier within the state.

II. PROCEDURAL HISTORY

On June 17, 2009, TracFone, pursuant to 30 V.S.A. § 231, the provisions outlined in Docket No. 5808, and the rules and regulations of the Board, filed a Commercial Mobile Radio Service Provider Registration Form ("Registration Form") seeking a CPG to offer CMRS services in the State of Vermont.¹

On July 13, 2009, the Vermont Department of Public Service ("Department") filed a letter with the Board in which it stated that it was concerned that TracFone was operating in Vermont without a CPG. The letter also states that the Department had begun negotiations with TracFone regarding this concern and would submit its recommendation regarding the application once this concern was addressed by TracFone.

1. On June 30, 2009, the Company completed the application by submitting its Vermont Secretary of State Certificate of Authority, as well as a Tradename Registration Form for NET10.

On October 11, 2011, the Department filed an Agreement and Stipulation (“Stipulation”) fully addressing the Department’s previously stated concern. The Department recommends that a CPG be granted without the need for investigation or hearing, conditioned upon the terms contained in the Agreement and Stipulation.

The Board has reviewed the Registration Form and Stipulation and agrees that a CPG should be issued without hearing. We also conclude that the CPG should be conditioned upon the terms contained in the Stipulation.

Based upon the Registration Form and Stipulation, the Board makes the following findings.

III. FINDINGS

1. TracFone, headquartered at 9700 N.W. 112th Street, Miami, FL 33178, will provide commercial mobile radio services in Vermont in accordance with its license issued by the Federal Communications Commission. Registration Form at 1.

2. Corporate Creations Network Inc., 3069 Williston Road, South Burlington, VT 05403, is TracFone's registered agent in Vermont. Registration Form at 2.

3. TracFone has all the necessary authority to transact business in Vermont. TracFone is incorporated in Delaware and was granted a Certificate of Authority by the Vermont Secretary of State on June 9, 2009. Registration Form at Attachment.

4. TracFone has been operating in Vermont since 1997 without a CPG. Tracfone collected Vermont intrastate revenues of: 1) \$5,486,044 in 2006; 2) \$5,657,351 in 2007; 3) \$6,212,811 in 2008; 4) \$5,856,482 in 2009; and 5) \$8,501,060 in 2010. Stipulation at 1-2.

5. In order to resolve issues related to any alleged violation of 30 V.S.A. § 231 associated with its unauthorized operation, Tracfone has agreed to submit to the Department the total gross revenue tax due for the years it has collected revenues in Vermont from 2006-2010, including a 50% late payment penalty for each year, with the exception of 2010. Stipulation at 2.

IV. DISCUSSION

Pursuant to 30 V.S.A. §§ 102 and 231, all companies intending to offer telecommunications services in Vermont are required to obtain a CPG by the Board.² For CMRS providers, the Board has simplified the CPG application process due to federal preemption. The registration/identification process involves no substantial Board review nor does it condition the entry into Vermont's telecommunications market, in order to conform with preemption provisions set forth in federal statute.³

The Board has generally held that CMRS should be subject to little regulation.⁴ While we have no interest in unduly burdening CMRS providers, the provision of CMRS in Vermont raises numerous economic and consumer-protection issues. Consequently, we have adopted a registration mechanism that imposes minimal requirements upon CMRS providers, but which provides them with the notice of their duties as companies operating in the State of Vermont.

Because it is our understanding that CMRS providers no longer use tariffs, but rather "contract forms," a condition of certification in Vermont is that CMRS file an up-to-date contract form with the Board in order to keep it informed of the company's terms and conditions of service. We find this to be an acceptable practice and will deem a company to have met the tariff filing requirement by providing the Board with the applicable contract forms containing all terms and conditions of service.

We also require CMRS providers to file for informational purposes any changes in its terms and conditions of service. If and when TracFone changes any other terms and conditions of service, it is TracFone's duty and responsibility to file notice of such changes at least 45 days prior to the effective date of the changes.

The Board also requires that all telecommunications providers offering prepaid calling services post a bond, payable to the Board, in an amount equal to their projected Vermont intrastate revenues from its prepaid calling services for the first 12 months of operation. The Board has imposed such a requirement because of its concern regarding the potential rights to consumers associated with payment in advance of receipt of service.

2. Section 102 applies for newly-formed Vermont corporations, while § 231 applies to all others.

3. *Id.*, 47 U.S.C. § 332(c)(3)(A).

4. Docket 5808, Order of 3/1/00.

Tracfone's application for a CPG raises additional issues related to the company's unauthorized operation in Vermont since 1997 in violation of 30 V.S.A. § 231. In order to address these issues, Tracfone and the Department have entered into the Stipulation. The Stipulation provides that Tracfone pay its total gross revenue tax due for the years of operation 2006-2010, and an additional 50% late payment penalty for each year, with the exception of 2010. We find that the Stipulation provides an appropriate resolution of the issues raised by Tracfone's previous unauthorized provision of service.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Based on the above findings, discussion and conclusion, the provision of commercial mobile radio services by TracFone Wireless, Inc. ("TracFone"), will promote the general good of the State of Vermont, pursuant to the provisions of 30 V.S.A. § 231. A certificate of public good ("CPG") shall be issued to that effect, subject to the conditions contained in the CPG.

2. TracFone shall file a copy of its standard service contract with the Board within sixty (60) days of the date of this Order. TracFone shall provide the Board with all current terms and conditions of service through the regular submission of applicable contract forms forty-five (45) days in advance of implementation.

3. If TracFone proposes to offer prepaid calling services, it shall post a bond, payable to the Board, in an amount equivalent to its projected intrastate revenues from its prepaid calling service for the first twelve (12) months of operation.

4. TracFone is authorized to do business in the State of Vermont under the name TracFone Wireless, Inc., d/b/a NET10. If TracFone conducts business in Vermont under any other name, it shall file a notice of the new trade name with the Clerk of the Board and the Vermont Department of Public Service at least fifteen days before commencing business under the new trade name.⁵

5. For a corporate name change, *see* 11 V.S.A. § 4.01 and 30 V.S.A. § 231. Petitioner may wish to contact the Clerk of the Board for assistance.

5. TracFone shall contact the Vermont Department of Public Service and make arrangements for further filings containing Company Annual Reports, and a copy of Gross Revenue Tax payments for calendar year ends on forms available from the Department.

Dated at Montpelier, Vermont, this 26th day of October, 2011.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: OCTOBER 26, 2011

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.